TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 378.

LUIGI STORTI, APPELLANT,

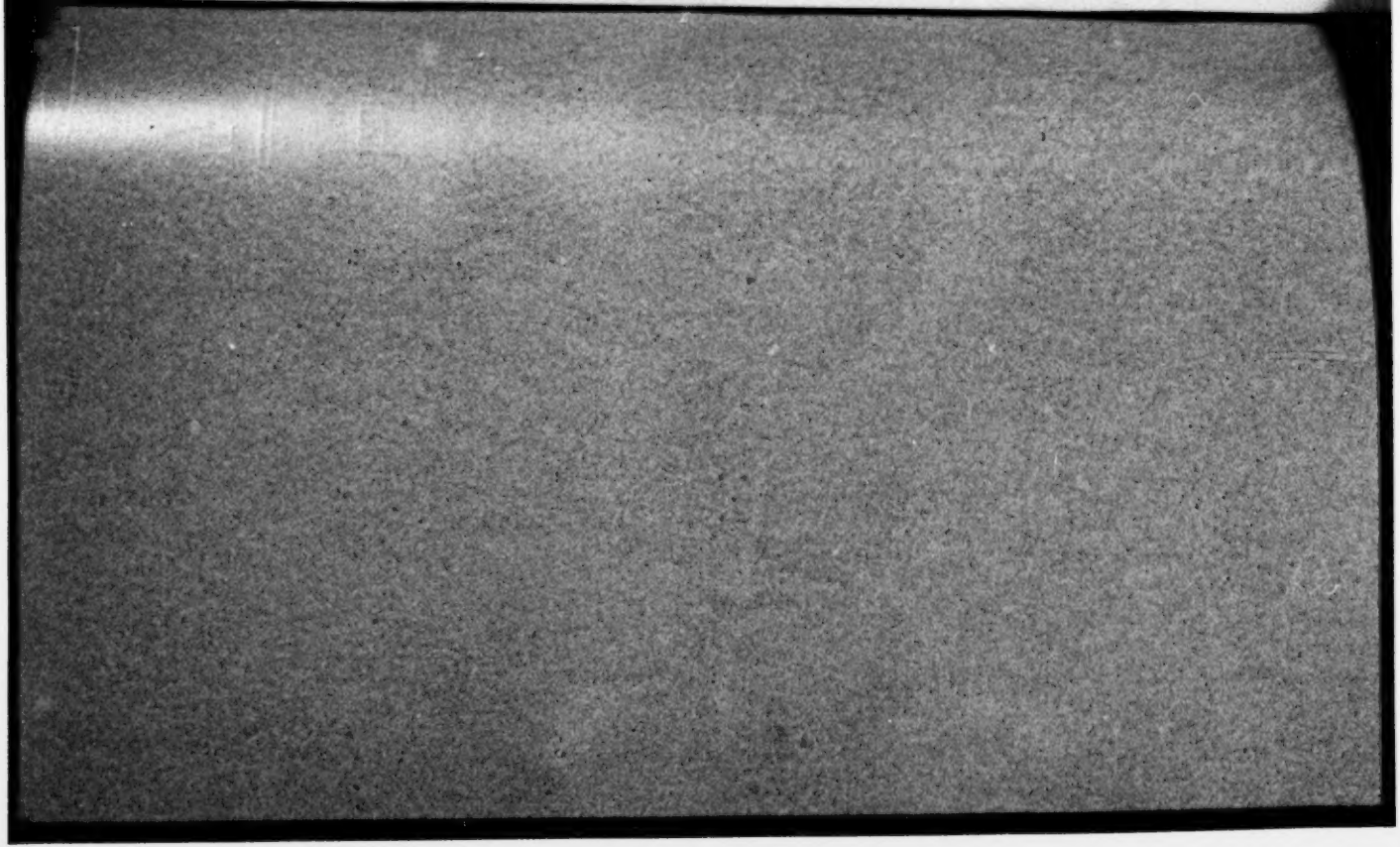
vs.

THE COMMONWEALTH OF MASSACHUSETTS AND BENJAMIN F. BRIDGES, WARDEN OF THE STATE PRISON AT BOSTON, MASSACHUSETTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED JULY 10, 1901.

(18,231.)



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1 UNITED STATES OF AMERICA, } ss:
District of Massachusetts, }

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of May, in the year of our Lord one thousand nine hundred and one. Before the Honorable William L. Putnam, circuit judge.

LUIGI STORTI, Petitioner for Writ of *Habeas Corpus.* No. 1122*a*, Law Docket.

The petition in this cause is filed in the clerk's office of this court on the twenty-third day of May, A. D. 1901, and is duly entered at the present May term, A. D. 1901, and is in the words and figures following:

2 *Petition.*

(Filed May 23, 1901.)

To the honorable the justices of the circuit court of the United States for the first circuit:

Respectfully represents Luigi Storti that he is and has always been a subject of the King of Italy and a citizen of the Kingdom of Italy; that he, the said Luigi Storti, is unlawfully restrained of his liberty by Benjamin F. Bridges, the warden of the State prison at Charlestown, in the county of Suffolk, and Commonwealth of Massachusetts, and a citizen of said Commonwealth.

The pretense of such restraint by said Bridges, according to the belief of your petitioner, is that he has been committed to the custody of said Bridges in the State prison at Charlestown aforesaid, pursuant to a warrant, a copy of which is hereto annexed marked "A," then and there to await the execution of the sentence of death for the crime of killing one Michele Colucci on the morning of November 7, 1899, of which crime aforesaid your petitioner was found guilty according to the counts as set forth in the indictment, a copy of which is hereto annexed and marked "B;" that upon the verdict of guilty being rendered by the jury as aforesaid, the court on January 4, 1901, sentenced your petitioner to be executed in accordance with the provisions of chapter 326 of the Acts of 1898 of the legislature of the Commonwealth of Massachusetts, setting the time for said execution to take place within the week beginning Sunday, April 7, 1901, such actual time for execution during the week aforesaid being at the discretion of the said Bridges of the State prison at Charlestown aforesaid; that on April 9, 1901, his excellency, the governor of this Commonwealth, by and with the advice of the council, issued a document, a copy of which is hereto annexed marked "C," and which purported to be issued as a respite in pursuance of section 36 of chapter 214 of Massachusetts Public Statutes the term of which purported respite expired on Saturday, May 11,

1901, and there has been no further lawful pardon, commutation or respite of sentence by the governor, as provided in section 3 of said chapter 326.

3 And your petitioner further represents that on April 30, 1901, he through his then counsel of record, filed a petition for a writ of error to said superior court, and at the same time a petition for a writ of *habeas corpus* was filed in his behalf, in the supreme judicial court, for the county of Suffolk in the Commonwealth of Massachusetts; that both of the said proceedings were reserved for the consideration of the supreme judicial court of the Commonwealth, being the highest court of said State in which a decision could be had and said petitions were duly argued therein, and on May 7, 1901, a decision was rendered denying the writ of *habeas corpus* and directing that the judgment of the superior court should stand. Copies of said proceedings and the opinion thereon, are hereto annexed and marked Exhibits D, E and F, respectively.

And your petitioner further represents that on the afternoon of May 10, 1901, he presented to this honorable court, a petition for a writ of *habeas corpus*, alleging that he was unlawfully restrained of his liberty upon grounds and for reasons therein more fully set forth, to which last-mentioned petition reference is hereby made for a more complete description of said grounds and reasons; and that on the morning of May 11, 1901, said last-mentioned petition was upon hearing dismissed and your petitioner forthwith claimed an appeal to the Supreme Court of the United States, which appeal was duly allowed by the presiding justice and perfected and docketed in the Supreme Court of the United States, on May 18, 1901, and is there still pending and undetermined.

And your petitioner further represents that on May 10, 1901, and subsequent to the filing of the last-mentioned petition, your petitioner filed in the superior court for the county of Suffolk in said Commonwealth, a motion for a new trial, in accordance with the provisions of the Massachusetts Public Statutes, chapter 214, section 28, and accompanied said

4 motion with affidavits in support thereof, and said motion was, before the decision on the last-mentioned petition for a writ of *habeas corpus*, assigned for hearing for the afternoon of May 11, 1901, but upon evidence presented to said superior court that an appeal from the order disallowing said petition for a writ of *habeas corpus* was then pending and undetermined, no action was taken on said motion for a new trial, and the same is still pending in said superior court and undetermined.

And your petitioner further avers that the restraint and imprisonment imposed upon him, in that he is confined by the said Bridges at the State prison at Charlestown aforesaid, for the purpose of awaiting the infliction of the death penalty, according to said chapter 326 of the Acts of 1898, are unauthorized and illegal, because:

I.

Neither chapter 326 of the Acts of 1898 of the Commonwealth of Massachusetts, under the authority and in accordance with the pro-

visions of which the respondent Bridges proposes to inflict the death penalty upon your petitioner, nor any other law, statutory or otherwise of said Commonwealth, provides for any punishment for a person sentenced to death under said chapter 326, where the week appointed by the court for his execution has elapsed without execution having been done upon him, and without any lawful action by the governor, in the way of pardon, commutation or respite, as provided in section 3 of said chapter 326, and the respondent Bridges has no right or authority under the laws of said Commonwealth to hold the prisoner in any further restraint or to inflict the death penalty. Nevertheless, the said Bridges continues to hold your petitioner in restraint at the State prison aforesaid, for the purpose of causing execution to be done upon him by the infliction of the death penalty, contrary to the provisions of the first section of the 14th amendment to the Constitution of the United States, under which your petitioner sets forth and specially claims a right, title, privilege and immunity.

II.

Neither chapter 326 of the Acts of 1898 of the Commonwealth of Massachusetts, under the authority and in accordance with the provisions of which the respondent Bridges proposes to inflict the death penalty upon your petitioner, nor any other law, statutory or otherwise of said Commonwealth, provides for any punishment for a person sentenced to death under said chapter 326, where the week appointed by the court for his execution has elapsed without execution having been done upon him, and without any lawful action by the governor, in the way of pardon, commutation or respite, as provided in section 3 of said chapter 326, and the respondent, Bridges has no right or authority under the laws of said Commonwealth to hold the prisoner in any restraint or to inflict the death penalty. Nevertheless, the said Bridges continues to hold your petitioner in restraint at the State prison aforesaid, for the purpose of causing execution to be done upon him, by the infliction of the death penalty, contrary to the provisions of the first section of the 14th amendment to the Constitution of the United States, and contrary to the third article of the now existing treaty between the United States of America and His Majesty, the King of Italy, and contrary to section second of article six of the Constitution of the United States, under which amendment, treaty and section your petitioner specially sets up and claims herein a right, title and immunity.

III.

Section 28 of chapter 214 of the Public Statutes of Massachusetts, provides as follows:

"The supreme judicial court and the superior court may, at the term at which the trial of an indictment is had, or within one year thereafter, on the petition or motion of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it appears to the court that justice

has not been done, or on such terms, or conditions as the court may direct."

Under this statute, execution cannot lawfully be done upon a person, sentenced to death within a year from the expiration of the term within which he was convicted, to wit, in the present case, before July 1, 1901. Nevertheless, the supreme judicial court for the Commonwealth of Massachusetts has confirmed the sentence of your petitioner by which the execution was fixed for a time within a year of the expiration of the term within which your petitioner was convicted. The question of your petitioner's rights as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, was not raised before the said supreme judicial court for the Commonwealth of Massachusetts, or in any court of Massachusetts, and the question as to the rights under the above-mentioned statute of a person sentenced to death as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, has never been raised and determined by the said supreme judicial court for the Commonwealth of Massachusetts. The execution of said sentence within said year will deprive your petitioner of his right under said section 28 of chapter 214, of the Public Statutes of Massachusetts, to move for a new trial within a year of the expiration of the term within which he was convicted and will deprive your petitioner of his life, without due process of law, and will deny him the equal protection of the laws, contrary to the first section of the 14th amendment of the Constitution of the United States, under which your petitioner specially sets up and claims herein, a right, title, privilege and immunity.

7 IV.

Section 28 of chapter 214 of the Public Statutes of Massachusetts, provides as follows:

"The supreme judicial court and the superior court may, at the term at which the trial of an indictment is had, or within one year thereafter, on the petition or motion of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, or on such terms or conditions as the court may direct."

Under this statute, execution cannot lawfully be done upon a person sentenced to death within a year from the expiration of the term within which he was convicted, to wit, in the present case, before July 1, 1901. Nevertheless, the supreme judicial court for the Commonwealth of Massachusetts has confirmed the sentence of your petitioner by which the execution was fixed for a time within a year of the expiration of the term within which your petitioner was convicted. The question of your petitioner's rights as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, was not raised before the said supreme judicial court for the Commonwealth of Massachusetts, or in any court of Massachusetts, and the question as to the rights under the above-mentioned statute of a person sentenced to death as

to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, has never been raised and determined by the said supreme judicial court for the Commonwealth of Massachusetts. The execution of said sentence within said year will deprive your petitioner of his right under said section 28 of chapter 214, of the Public Statutes of Massachusetts, to move for a new trial within a year of the expiration of the term within which he was convicted and will deprive your petitioner of his life, without due
8 process of law and will deny him the equal protection of the laws, contrary to the first section of the 14th amendment to the Constitution of the United States, and contrary to the third article of the now existing treaty between the United States of America, and His Majesty, the King of Italy, and contrary to section second of article six of the Constitution of the United States, under which amendment, treaty and section your petitioner specially sets up and claims herein a right, title, privilege and immunity.

V.

Section 28 of chapter 214, of the Public Statutes of Massachusetts, provides as follows:

"The supreme judicial court and superior court may, at the term at which the trial of an indictment is had, or within one year thereafter, on the petition or motion of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done or on such terms or conditions as the court may direct."

Under this statute, execution cannot lawfully be done upon a person sentenced to death within a year from the expiration of the term within which he was convicted, to wit, in the present case, before July 1, 1901. Nevertheless, the supreme judicial court for the Commonwealth of Massachusetts has confirmed the sentence of your petitioner by which the execution was fixed for a time within a year of the expiration of the term within which your petitioner was convicted. The question of your petitioner's rights as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, was not raised before the said supreme judicial court for the Commonwealth of Massachusetts, or any court of Massachusetts, and the question as to the rights under the above-men-
9 tioned statute of a person sentenced to death as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, has never been raised and determined by the said supreme judicial court for the Commonwealth of Massachusetts. The execution of said sentence within said year, will deprive your petitioner of his right under said section 28 of chapter 214 of the Public Statutes of Massachusetts, to move for a new trial within a year of the expiration of the term within which he was convicted, and of his right to be present at the decision on such motion, which right is guaranteed to him

by article 23 of the treaty now in force between the United States of America and His Majesty, the King of Italy, to wit:

"The citizens of either party shall have free access to the courts of justice, in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives. They shall, therefore, be free to employ, in defence of their rights, such advocates, solicitors, notaries, agents and factors as they may judge proper, in all their trials at law; and such citizens or agents shall have full opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them, and likewise at the taking of all examinations and evidences which may be exhibited in the said trials."

Your petitioner specially sets up and claims herein, a right, title, privilege and immunity in the above respect, under said treaty.

VI.

Under the law of Massachusetts, pending the motion for a new trial, above referred to, which was filed by your petitioner May 10, 1901, execution cannot lawfully be done upon your petitioner by the infliction of the death penalty. Nevertheless, your petitioner apprehends, with reason, that notwithstanding the pendency of said motion for a new trial, and before your petitioner can have a fair opportunity to be heard on said motion and to be present at the decision of said motion, the respondent intends, immediately upon the determination of the appeal above referred to, now pending in the Supreme Court of the United States, in case the decision on said appeal shall be adverse to your petitioner, to forthwith cause execution to be done upon your petitioner and to thereby deprive him of his rights under the first section of the 14th amendment to the Constitution of the United States and under the said article 23 of the treaty between the United States of America, and His Majesty, the King of Italy, under which amendment and which treaty your petitioner specially sets — and claims herein a right, title, privilege and immunity.

VII.

The respondent, Bridges, as warden of the State prison, derives his authority to hold your petitioner in custody solely by virtue of, and only in strict accordance with, the provisions of said chapter 326 of the Acts of 1898, and neither he nor his predecessors in office, prior to the passage of said chapter 326 of the Acts of 1898, ever have had authority to hold in custody a person convicted of the crime of murder in the first degree. No authority is given to the said respondent, as warden of the State prison aforesaid, or in any capacity to retain the custody of your petitioner after the expiration of the week appointed by the court, within which sentence shall be executed, except through the lawful action of the governor as set forth in section 3 of said chapter 326. The week appointed by the court, within which sentence shall be executed upon your petitioner, has expired, and no lawful action has been

taken by the governor, in the way of pardoning the offense,
11 commuting the punishment therefor, or respiting the execution, and said respondent, as said warden, has now no authority of law to retain the custody of your petitioner. Nevertheless said respondent Bridges, continues to hold your petitioner in restraint, at the State prison aforesaid, and is depriving your petitioner of hi, liberty, without due process of law, and is denying to your petitioner the equal protection of the laws contrary to the provisions of section 1 of article 14 of the amendments to the Constitution of the United States, under which your petitioner sets up and specially claims herein a right, title, privilege and immunity.

VIII.

The respondent, Bridges, as warden of the State prison, derives his authority to hold your petitioner in custody solely by virtue of, and only in strict accordance with, the provisions of said chapter 326 of the Acts of 1898, and neither he nor his predecessors in office, prior to the passage of said chapter 326 of the Acts of 1898, ever have had authority to hold in custody a person convicted of the crime of murder in the first degree. No authority is given to the said respondent, as warden of the State prison aforesaid, or in any capacity, to retain the custody of your petitioner after the expiration of the week appointed by the court, within which sentence shall be executed, except through the lawful action of the governor, as set forth in section 3, of said chapter 326. The week appointed by the court, within which sentence shall be executed upon your petitioner, has expired, and no lawful action has been taken by the governor, in the way of pardoning the offense, commuting the punishment therefor, or respiting the execution, and said respondent, as said warden, has now no authority of law to retain the custody of your petitioner.

Nevertheless, said respondent, Bridges, continues to hold
12 your petitioner in restraint, at the State prison aforesaid, and is depriving your petitioner of his liberty, without due process of law, and is denying to your petitioner the equal protection of the laws contrary to the provisions of section 1 of article 14 of the amendments to the Constitution of the United States, and contrary to the third article of the now existing treaty between the United States of America and His Majesty the King of Italy, and contrary to section second of article six of the Constitution of the United States, under which amendment, treaty and section your petitioner specially sets up and claims herein a right, title, privilege and immunity.

Wherefor-, your petitioner prays that a writ of *habeas corpus* may be granted and that he may be discharged from such unlawful restraint and imprisonment.

LUIGI STORTI.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

BOSTON, *May* 23, 1901.

Then personally appeared Luigi Storti, who has subscribed the foregoing petition, and made oath that he has had read to him the facts therein set forth, and that said facts are true.

Before me,

WM. M. STOCKBRIDGE,
Justice of the Peace.

WM. M. STOCKBRIDGE,
G. PHILIP WARDNER,
Of Counsel for Petitioner.

13 "A."

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

To the sheriff of our county of Suffolk, to such deputy as he may name, and to the warden of our State prison at Boston, in said Commonwealth:

Whereas, at a sitting of our superior court holden at Boston, within and for our said county of Suffolk, for the transaction of criminal business, on the fourth day of January in the year of our Lord nineteen hundred and one, Luigi Storti of said Boston, was convicted of the crime of murder in the first degree, and thereupon by our said court the said Luigi Storti was adjudged and sentenced for said crime to suffer the punishment of death by the passage of a current of electricity through his body, within the week beginning on Sunday, the seventh day of April next, as to us appears of record, a copy of which record we have caused to be hereunto annexed; and whereas a certified copy of the whole record of said conviction and sentence has been delivered to his excellency the governor, as required by law, execution of which sentence remains to be done:

We, therefore, command you said sheriff, to confine him said Luigi Storti in the jail in our said county of Suffolk, until within ten days of Sunday, the said seventh day of April next, being the first day of the week appointed for the execution of said sentence, and thereupon and within said ten days to convey him as secretly as may be to our said State prison, and to deliver him with this our warrant and with a return of your doings hereon to the said warden of said
14 State prison or to the officer performing the duties of said warden.

And we command you, said warden, that you receive him said Luigi Storti and keep him in close custody, as provided by law, until the infliction of the punishment of death upon him, and that on some day to be by you selected within the week beginning on the said Sunday, the seventh day of April next, and at an hour between midnight and sunrise, within the building provided for the purpose adjoining said State prison, agreeably to the provisions of the statute in such case made and provided, you cause execution of

the said sentence of our said court in all respects to be done and performed upon him the said Luigi Storti by causing to pass through his body a current of electricity of sufficient intensity to cause death and continuing the application of such current until he is dead; for all which this shall be your sufficient warrant.

Hereof fail not at your peril, and you said warden are to make return of this warrant with your doings hereon into the office of the clerk of our said court within and for our said county of Suffolk, as soon as may be after you shall have executed the same.

Witness Albert Mason, Esquire, and the seal of our said court, at said Boston, this eighth day of January, in the year of our Lord nineteen hundred and one.

JOHN P. MANNING, *Clerk.*

15 *Record.*

This indictment was found and returned into said superior court by the grand jurors on the ninth day of December, A. D., 1899, when notices of the finding of said indictment, with copies of said indictment, were sent by the clerk of said court to the chief justice of said court and the attorney general of said Commonwealth.

On said day, a copy of said indictment and a notice of its finding by the grand jurors and its entry in said superior court, were delivered by said clerk to the sheriff of said county to be by him delivered to said Storti in the common jail in said county; and on the twelfth day of said December said copy and notice were delivered to said Storti in said jail by said sheriff.

On the twenty-seventh day of said December, said Storti was brought into said court from said jail and was set at the bar, and having said indictment read to him, he said thereof that he was not guilty.

Said Storti thereupon notified said court that he was without counsel and requested said court to assign counsel for his defence, and said Storti was remanded to said jail.

On the twenty-seventh day of April, A. D. 1900, said Storti was brought into said court from said jail and notified said court that he had retained Peter S. Maher, Esquire, as his counsel and withdrew his request that the court assign his counsel for his defence, and said Storti was remanded to said jail.

16 On the eleventh day of June, A. D., 1900, said Storti notified said court that he was without counsel and requested a second time that the court assign counsel for his defence; thereupon the court appointed Peter S. Maher, Esquire, and Clarence W. Rowley, Esquire, counsel for said Storti, and said Storti was notified of said appointment at said jail by the clerk of said court.

On the twenty-fifth day of said June, said Storti was brought into said court from said jail and by his attorneys aforesaid filed a motion to quash said indictment, which motion, after a hearing before Hon. Daniel W. Bond, and Hon. Frederick Lawton, justices of said court, was overruled, and said Storti was set at the bar, and for trial put himself upon the country, and the Commonwealth did

the like by its attorneys, Michael J. Sughrue, Esquire, and John D. McLaughlin, Esquire.

A jury was empanelled and sworn to try the issue, to wit, George R. Whittemore, foreman, and eleven of his fellows, namely, Timothy F. Callahan, John R. Maguire, John B. Kinney, Jacob Shillady, James B. Fuller, John H. West, Clayton O. Dewey, George F. Waldron, Samuel H. Irwin, Donald V. Goodwin and Alfred W. Tilton, who, after hearing and understanding all matters and things concerning the same, returned their verdict on the first day of July, A. D. 1900, and on oath said that said Storti was guilty of murder in the first degree.

The court thereupon extended the time for the filing of exceptions by said Storti until on or before the first day of August, A. D. 1900, and said Storti was remanded to said jail.

17 On the twenty-fifth day of said July, said Storti, by his attorneys, filed exceptions to the rulings of the presiding justices at said trial.

On the tenth day of November, A. D. 1900, said exceptions being examined, and found conformable to the truth, were allowed and were ordered to be transmitted to the supreme judicial court.

On the fourteenth day of November, A. D. 1900, the said Storti, by his attorneys filed an appeal to said supreme court from the order of said superior court overruling said motion to quash.

On the second day of January A. D. 1901, a rescript is received from said supreme court in the words following: "Exceptions overruled."

On the third day of said January a second rescript is received from said supreme court in the words following: "Rescript of January 2, 1901, amended by adding thereto, order overruling the motion to quash the indictment affirmed."

On the fourth day of said January, the said Storti is brought into said court from said jail and is set at the bar to receive sentence.

It is therefore considered and ordered by said court that said Storti, for his offence of murder in the first degree, suffer the punishment of death by the passage of a current of electricity through his body, and that said sentence be executed upon said Storti within the week beginning on Sunday the 7th day of April, in the year of our Lord one thousand nine hundred and one, in the manner prescribed by the laws of said Commonwealth, and that said Storti stand committed in pursuance of said sentence.

All of which appears of record in said superior court. In
18 testimony whereof, I hereunto set my hand and affix the seal of said superior court, at Boston, aforesaid, this eighth day of January in the year of our Lord, one thousand nine hundred and one.

[SEAL.] JOHN P. MANNING, *Clerk.*

19 "B."

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

At the superior court, begun and holden at the city of Boston, within and for the county of Suffolk, for the transaction of criminal business, on the first Monday of December, in the year of our Lord one thousand eight hundred and ninety-nine, the jurors for the Commonwealth of Massachusetts, on their oath present that Luigi Storti and Vincenzo Bocielli, otherwise called Vincenzo Buccilla, otherwise called Vincenzo Bucillo, of Boston, aforesaid, on the seventh day of November, in the year of our Lord one thousand eight hundred and ninety-nine, at Boston, aforesaid, with force and arms, in and upon one Michele Callucci, feloniously, wilfully and of their malice aforethought did make an assault; and that the said Storti and Bocielli, with a certain axe the said Callucci, in and upon the head of said Calucci, then and there feloniously, wilfully and of their malice aforethought, did strike, beat and bruise, giving to the said Calucci then and there, with the axe aforesaid, in and upon the head of said Calucci, divers mortal strokes, wounds and bruises, of which said mortal strokes, wounds and bruises the said Calucci on said seventh day of November, at Boston aforesaid, did languish and languishing did live, on which said seventh day of November, the said Calucci at Boston aforesaid, of the said mortal strokes, wounds and bruises, died.

And the jurors aforesaid, upon their oath aforesaid, do say, that the said Luigi Storti and said Vincenzo Bocielli the said Michele Calucci in manner and form aforesaid then and there feloniously, wilfully and of their malice aforethought did kill and mur-
20 der. And the jurors, aforesaid, for the Commonwealth of Massachusetts, on their oath aforesaid, do further present that Luigi Storti and Vincenzo Bocielli, otherwise called Vincenzo Bucilla, otherwise called Vincenzo Bucillo, did assault and beat Michele Calucci with intent to murder him, by striking him over the head with an axe, and by said assault and beating did kill and murder said Calucci.

And the jurors aforesaid do say, that both counts in this indictment are different descriptions of the same act.

A true bill.

JOHN H. McGEE,
Foreman of the Grand Jury.

JOHN D. McLAUGHLIN,
2d Ass't District Attorney.

21 "C."

The Commonwealth of Massachusetts to all persons to whom these presents shall come, Greeting:

[L. S.] W. Murray Crane.

Whereas, before our superior court begun and holden at the city of Boston within and for the county of Suffolk, on the first Monday of June, in the year of our Lord one thousand nine hundred, Luigi Storti was convicted of the crime of murder in the first degree, and thereafter to wit, on the fourth day of January in the year of our Lord one thousand nine hundred and one, it was considered and ordered by said superior court that said Storti for his offence of murder in the first degree, suffer the punishment of death, by the passage of a current of electricity through his body, and that said sentence be executed upon said Storti within the week beginning on Sunday, the seventh day of April, in the year of our Lord one thousand nine hundred and one, in the manner prescribed by the laws of said Commonwealth, which said sentence remains unexecuted.

And whereas, by section 36 of chapter 215 of our Public Statutes "the governor, by and with advice of council, may respite from time to time, the execution of a sentence of death for stated periods so long as he may deem it necessary to afford him by and with the advice aforesaid, an opportunity of exercising the constitutional right of pardon, and of investigating and considering the facts of the case for that purpose."

Now know ye, that by and with the advice — council, the execution of said sentence of our superior court against said Luigi
22 Storti is respited, the term of respite to expire on Saturday, the eleventh day of May next; of which all our judges, justices, magistrates, and officers of every denomination, especially the warden of our State prison, are to take notice.

Witness his excellency, W. Murray Crane, our governor, with the advice and consent of our council, and our seal hereunto affixed, at Boston, this tenth day of April, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-fifth.

By his excellency, the governor, with the advice of the council.

HERBERT H. BOYNTON,
Deputy Secretary of the Commonwealth.

23 "D."

COMMONWEALTH OF MASSACHUSETTS, *Suffolk County.*

Supreme Judicial Court. Common Law.

LUIGI STORTI
v.
COMMONWEALTH OF MASSACHUSETTS.

Petition for Writ of Error, as Amended.

To the honorable the justices of the supreme judicial court now sitting at Boston within and for said county of Suffolk:

Respectfully represents your petitioner, Luigi Storti of Boston in the county of Suffolk, as follows:—

That on the ninth day of December A. D. 1899, the grand jurors for the Commonwealth of Massachusetts did find and present to the superior court for the county of Suffolk an indictment, a copy whereof is hereto annexed, marked A,* charging your petitioner with the crime of murder.

On the first day of July A. D. 1900, in the superior court sitting at Boston, within and for the county of Suffolk, for the transaction of criminal business, your petitioner was found guilty upon said indictment of the offence of murder in the first degree.

On the fourth day of January A. D. 1901, your petitioner was sentenced by said superior court, under the provisions of chapter 326 of the Acts of 1898, for his said offence of murder in the first degree, to suffer the punishment of death by the passage of a current of electricity through his body, within the week beginning on Sunday the seventh day of April A. D. 1901. That thereupon your petitioner was committed to the common gaol at Boston
24 aforesaid in pursuance of said sentence, and was there confined until March 28, 1901, when he was removed to the State prison at Boston aforesaid for execution of said sentence.

That on April 9, 1901, his excellency, the governor of Massachusetts, by and with the advice and consent of the council, reprieved your petitioner until May 11, 1901, and your petitioner is now confined in said State prison pursuant to said sentence, and is in charge of Benjamin F. Bridges of Boston aforesaid, as warden of said State prison.

From said March 28, 1901, your petitioner has been, and is now, for the execution of the sentence aforesaid, detained in said prison by said warden, by virtue of the sentence and commitment aforesaid, and of a warrant of said superior court commanding said warden to cause execution of said sentence to be done and performed upon your petitioner by causing to pass through his body a current of electricity of sufficient intensity to cause death, and continuing

* For indictment see record of superior court.

the application of such current until he is dead, a copy whereof is hereto annexed marked B, and by no other authority and for no other reason.

(And your petitioner further says that he is and ever has been a subject of the King of Italy, and that at the time of the commission of the offence of which he was convicted he was in this country and Commonwealth under the provisions of certain treaties between the United States and Italy, and was entitled and is still entitled to all the rights and privileges secured to subjects of the King of Italy by and under the provisions of the aforesaid treaties.)

Therefore your petitioner says that there was error in said proceedings of said superior court, and assigns the error as follows:—

(See page 3.)

Wherefore your petitioner prays,—

First. That a writ of error to said superior court, and a writ of *scire facias* to said Commonwealth, may be issued.

Second. That, pending the decision of this honorable court upon said writ of error, the execution of said sentence imposed upon your petitioner may be stayed.

Third. That the judgment of said superior court sentencing your petitioner may be reversed, and his cause be remanded to said superior court with instructions to discharge your petitioner.

Fourth. For such other and further relief as to your honors may seem meet, and as justice requires.

LUIGI STORTI.

CLARENCE W. ROWLEY,
Counsel for Petitioner.

25 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

BOSTON, *April* 30, 1901.

Then personally appeared Clarence W. Rowley, and made oath that the statements of fact contained in the foregoing petition are true, to the best of his knowledge and belief.

Before me,

JOHN NOBLE,
Justice of the Peace.

Filed April 30, 1901.
Amendment filed and allowed May 2, 1901, as of May 1, 1901.

Amended Assignment of Errors.

First. The sentence was wholly unauthorized and void, as the act under which the petitioner was sentenced provided for a cruel or unusual punishment for the offence of which your petitioner was convicted, contrary to the provisions of article XXVI, of the declaration of rights of the inhabitants of the Commonwealth of Massachusetts, and is in all respects contrary to the provisions of the constitution of this Commonwealth.

Second. The sentence was wholly unauthorized and void, inas-

much as it provides for the infliction of a punishment upon your petitioner which in fact is unusual, is contrary to the provisions of article XXVI of the declaration of rights, and is in all respects contrary to the provisions of the constitution of Massachusetts.

Third. The sentence was wholly unauthorized and void, inasmuch as it inflicts upon your petitioner a punishment which in fact is cruel or unusual, and is prohibited by article XXVI of the declaration of rights, and is in all respects contrary to the provisions of the constitution of Massachusetts.

Fourth. The sentence was wholly unauthorized and void, as section 6 of the Acts of the Year 1898 provided for the infliction of the punishment of death by means which in fact are cruel, unusual, of an uncertain character, and which in fact necessitate for ther successful action a remote combination of circumstances circuitously affecting the functions of organic life, by secret and invisible means, which means, in fact, are unusual, cruel, and unknown to the laws of this Commonwealth, and which punishment is contrary to the provisions of article XXVI of the declaration of rights, and contrary to the provisions of the constitution of Massachusetts.

Fifth. The sentence was wholly unauthorized and void, as the act under which the petitioner was sentenced deprived the petitioner of the right to be present personally in court and apply for a new trial, under the provisions of section 28 of chapter 214 of the
26 Public Statutes, and of being fully heard in his defence by himself, contrary to the provisions of article XII of the declaration of rights.

Sixth. The sentence was wholly unauthorized and void, in that the act under which the petitioner was sentenced provided for the close confinement of the petitioner in a cell in the State prison from the time of his delivery at said prison until his execution, unless he shall be lawfully discharged from such imprisonment, thereby depriving him of the right to be present in court and argue a motion for a new trial, the right to apply for which is secured to him by the provisions of section 28 of chapter 214 of the Public Statutes, or otherwise to be fully heard in his defence by himself, at any time after his delivery at said prison, contrary to the provisions of article 23 of the treaty between the United States and Italy proclaimed November 23, 1871, which right to be present in person and be heard in his defence the petitioner claims is secured to him as a subject of the King of Italy by the aforesaid treaty, and contrary to the provisions of article VI of the Constitution of the United States.

Seventh. That the commitment and detention aforesaid, in pursuance of said sentence, is wholly unauthorized and void, for the reason aforesaid.

CLARENCE W. ROWLEY,
Attorney for Plaintiff in Error.

Filed and allowed May 2, 1901, as of May 1, 1901.
Notice of the within petition is waived.

FREDERICK H. NASH,
Assistant Attorney General.

April 30, 1901.—Writ of error allowed.
OLIVER WENDELL HOLMES, *C. J. S. C.*

Writs of error and *scire facias* issued April 30, 1901. Returnable by order of court on May 1, 1901.

SUFFOLK, *ss:*

Pursuant to the precept of this writ, to me directed, I herewith send the record and process of the suit, and process within mentioned, with all things touching the same, all which are hereto annexed, to the honorable the justices of the supreme judicial court within named.

27 In testimony whereof, I hereunto put my hand and seal this first day of May in the year nineteen hundred and one.

ALBERT MASON,
[SEAL.] *Chief Justice, Superior Court.*

Copy of Superior Court Record.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *To wit:*

At the superior court, begun and holden at the city of Boston within and for the county of Suffolk, for the transaction of criminal business, on the first Monday of December in the year of our Lord one thousand nine hundred.

The Honorable Daniel W. Bond, a justice of said court presiding.

COMMONWEALTH }
v.
LUIGI STORTI. }

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

At the superior court, begun and holden at the city of Boston, within and for the county of Suffolk, for the transaction of criminal business, on the first Monday of December, in the year of our Lord one thousand eight hundred and ninety-nine,

The jurors for the Commonwealth of Massachusetts, on their oath present that Luigi Storti and Vincenzo Bocielli, otherwise called Vincenzo Buccilla, otherwise called Vincenzo Bucillo, of Boston aforesaid, on the seventh day of November, in the year of our Lord one thousand eight hundred and ninety-nine, at Boston aforesaid, with force and arms, in and upon one Michele Calucci, feloniously, wilfully and of their malice aforethought did make an assault; and that the said Storti and Bocielli, with a certain axe, the said Calucci, in and upon the head of said Calucci, then and there feloniously, wilfully and of their malice aforethought, did strike, beat and bruise, giving to the said Calucci then and there, with the axe aforesaid, in and upon the head of said Calucci, divers mortal strokes, wounds and bruises, of which said mortal strokes, wounds and bruises the

said Calucci on said seventh day of November, at Boston aforesaid, did languish and languishing did live, on which said seventh day of November, the said Calucci, at Boston aforesaid, of the said mortal strokes, wounds and bruises, died.

And so the jurors aforesaid, upon their oath aforesaid, do
28 say, that the said Luigi Storti and said Vincenzo Bocielli the said Michele Calucci in manner and form aforesaid then and there feloniously, wilfully and of their malice aforethought did kill and murder.

And the jurors, aforesaid, for the Commonwealth of Massachusetts, on their oath aforesaid, do further present that Luigi Storti and Vincenzo Bocielli, otherwise called Vincenzo Buccilla, otherwise called Vincenzo Bucillo, did assault and beat Michele Calucci with intent to murder him, by striking him over the head with an axe, and by said assault and beating did kill and murder said Calucci.

And the jurors aforesaid do say, that both counts in this indictment are different descriptions of the same act.

A true bill.

JOHN H. McGEE,
Foreman of the Grand Jury.

JOHN D. McLAUGHLIN,
2d Ass't District Attorney.

December 9, 1899.—Returned into said superior court by the grand jurors, and ordered to be filed.

Attest: JOHN P. MANNING, *Clerk.*

Record.

This indictment was found and returned into said superior court by the grand jurors on the ninth day of December A. D. 1899, when notices of the finding of said indictment, with copies of said indictment, were sent by the clerk of said court to the chief justice of said court and the attorney general of said Commonwealth.

On said day a copy of said indictment, and a notice of its finding by the grand jurors, and its entry in said superior court, were delivered by said clerk to the sheriff of said county to be by him delivered to said Storti in the common jail in said county; and on the twelfth day of said December said copy and notice were delivered to said Storti in said jail by said sheriff.

On the twenty-seventh day of said December said Storti was brought into said court from said jail and was set at the bar, and, having said indictment read to him, he said thereof that he was not guilty.

Said Storti thereupon notified said court that he was without counsel, and requested said court to assign counsel for his defence, and said Storti was remanded to said jail.

On the twenty-seventh day of April A. D. 1900 said Storti was brought into said court from said jail and notified said court
29 that he had retained Peter S. Maher, Esquire, as his counsel and withdrew his request that the court assign him counsel for his defence, and said Storti was remanded to said jail.

On the eleventh day of June A. D. 1900 said Storti notified said court that he was without counsel, and requested a second time that the court assign counsel for his defense. Thereupon the court appointed Peter S. Maher, Esquire, and Clarence W. Rowley, Esquire, counsel for said Storti, and said Storti was notified of said appointment at said jail by the clerk of said court.

On the twenty-fifth day of said June said Storti was brought into said court from said jail and by his attorneys aforesaid filed a motion to quash said indictment, which motion, after a hearing before Honorable Daniel W. Bond and Honorable Frederick Lawton, justices of said court, was overruled, and said Storti was set at the bar, and for trial put himself upon the country, and the Commonwealth did the like by its attorneys, Michael J. Sughrue, Esquire, and John D. McLaughlin, Esquire.

A jury was empanelled and sworn to try the issue, to wit, George R. Whittemore, foreman, and eleven of his fellows, namely, Timothy F. Callahan, John R. Maguire, John B. Kinney, Jacob Shillady, James B. Fuller, John H. West, Clayton O. Dewey, George F. Waldron, Samuel H. Irwin, Donald V. Goodwin, and Alfred W. Tilton, who, after hearing and understanding all matters and things concerning the same, returned their verdict on the first day of July A. D. 1900, and on oath said that said Storti was guilty of murder in the first degree.

The court thereupon extended the time for the filing of exceptions by said Storti until on or before the first day of August A. D. 1900, and said Storti was remanded to said jail.

On the twenty-fifth day of said July said Storti, by his attorneys, filed exceptions to the rulings of the presiding justices at said trial.

On the tenth day of November A. D. 1900, said exceptions, being examined and found conformable to the truth, were allowed and were ordered to be transmitted to the supreme judicial court.

On the fourteenth day of said November the said Storti, by his attorneys, filed an appeal to said supreme court from the order of said superior court overruling said motion to quash.

On the second day of January A. D. 1901, a rescript is received from said supreme court in the words following: "Exceptions overruled."

On the third day of said January a second rescript is received from said supreme court in the words following: "Rescript of Jan. 2, 1901, amended by adding thereto, order overruling the motion to quash the indictment affirmed."

On the fourth day of said January the said Storti is brought into said court from said jail and is set at the bar to receive sentence.

It is therefore considered and ordered by said court that said Storti, for his offense of murder in the first degree, suffer the punishment of death by the passage of a current of electricity through his body, and that said sentence be executed upon said Storti within the week beginning on Sunday, the seventh day of April, in the year of our Lord one thousand nine hundred and one in the manner

prescribed by the laws of said Commonwealth, and that said Storti stand committed in pursuance of said sentence.

On the eighth day of said January a certified copy of the whole of said record is delivered to the governor of said Commonwealth by the clerk of said court, and immediately thereafter a warrant under the seal of said court, stating the conviction and sentence of said Storti and the week appointed for the execution thereof, is delivered to the sheriff of said county by said clerk, and a certified copy of said warrant is transmitted to the warden of the State prison in said county.

All of which appears of record in said superior court.

In testimony whereof, I hereunto set my hand and affix the seal of said superior court, at Boston aforesaid, this first day of May in the year of our Lord one thousand nine hundred and one.

JOHN R. CAMPBELL,
Assistant Clerk.

[SEAL.]

Plea of Defendant in Error.

And now comes The Commonwealth of Massachusetts, the defendant in error, and says that there is not any error in the record and proceedings aforesaid or in giving the judgment and sentence aforesaid, or in the commitment and detention aforesaid; and the defendant in error prays that the court may proceed to examine the record and proceedings aforesaid and the matters aforesaid assigned for error, and that the judgment and sentence aforesaid in form aforesaid given may be in all things affirmed.

And further answering, the defendant in error says that the petitioner's assignments of errors in fact, to wit, that the sentence provides for the infliction of a punishment upon the petitioner which in fact is unusual, or which in fact is cruel or unusual, are not open to the petitioner in this court, for that the legislature has decided all said matters of fact, and the opinion of the legislature upon said matters of fact is not subject to review by this court; but if evidence be admitted that the infliction of said punishment is
31 the infliction of an unusual punishment, or of a cruel or unusual punishment, then the defendant in error says that the infliction of said punishment is not the infliction of an unusual punishment, or of a cruel or unusual punishment.

FREDERICK H. NASH,
Assistant Attorney General for the Commonwealth of Massachusetts.

Filed May 2, 1901.

Reservation.

Against the objection of the attorney general, the second, third, and fourth assignments of error came on to be heard before me as assignments of errors in fact. It was conceded by the Commonwealth that the petitioner in this writ of error is a citizen of the King of Italy; that the punishment of death by electricity has never been inflicted in this Commonwealth and that electricity has never

been used as a means of punishment for any offence in this Commonwealth.

I find as a fact that if electricity is properly applied it is necessarily fatal, and causes death practically instantaneously; that in causing death it is more speedy, less painful, and more humane than is hanging. I further find as a fact that it is not of an uncertain character; that it does not in fact necessitate for its successful action a remote combination of circumstances circuitously affecting the functions of organic life by secret and invisible means.

I also find that by the Revised Statutes of Maine (1883), by the Revised Statutes of Illinois (1899), Revised Statutes of Arizona (1887), Statutes and Code of Washington (1891), Code of Tennessee (1896), Revised Statutes of Florida (1892), Code of Alabama (1896), Revised Statutes of New York (1829), and Revised Statutes of Ohio (1890), it is provided that the means of carrying into effect the sentence of death shall be by hanging by the neck; and that by the statutes of Ohio (revision of 1900) it is provided that the means of carrying into effect the sentence of death shall be by causing a current of electricity to pass through the body sufficient to cause death; and that a statute was enacted in New York in January, 1888, providing that the punishment of death shall be inflicted by causing a current of electricity to pass through the body of the convict, and such current must be continued until the convict be dead.

I find as a fact that the second, third, and fourth assignments are not true.

At the request of the petitioner I reserve the case for the full court.

WILLIAM CALEB LORING, *J. S. J. C.*

May 4, 1901.

Copy.
Attest: —— ——, *Clerk.*

32 "E."

COMMONWEALTH OF MASSACHUSETTS, }
Suffolk County. }

Supreme Judicial Court. Common Law.

In the Matter of LUIGI STORTI.

Petition for Writ of Habeas Corpus.

To the honorable the justices of the supreme judicial court:

Your petitioner, Joseph Santosuosso of Boston in the county of Suffolk and Commonwealth of Massachusetts, respectfully represents, on behalf of Luigi Storti of said Boston, that the said Luigi Storti is unlawfully restrained of his liberty by Benjamin F. Bridges, the warden of the State prison at Charlestown in the county of Suffolk in said Commonwealth.

The pretence for such imprisonment by said Bridges, according to the belief of this complainant, is that the said Luigi Storti has

been committed to the custody of the said Bridges in the State prison at Charlestown aforesaid, pursuant to a warrant, a copy of which is hereto annexed marked A, then and there to await the execution of sentence of death for the crime of killing one Michele Colucci on the morning of November 7, 1899, of which crime aforesaid the said Luigi Storti was found guilty according to the counts as set forth in the indictment, a copy of which is hereto annexed marked B; that upon the verdict of guilty being rendered by the jury as aforesaid, the court, on January 4, 1901, sentenced the said Luigi Storti to be executed in accordance with the provisions of chapter 326 of the Act- of 1898 of the Legislature of this Commonwealth, setting the time for said execution to take place within the week beginning Sunday, April 7, 1901, such actual time for execution during the week aforesaid being at the discretion of the said Bridges, warden of the State prison at Charlestown aforesaid; that on April 9, 1901, the said Luigi Storti was respited by his excellency, the governor of this Commonwealth, by and with the advice of the council, according to a warrant, a copy of which is hereto annexed marked
33 C, and in pursuance to section 36 of chapter 215 of the Massachusetts Public Statutes, the term of which respite was to expire on Saturday, May 11, 1901.

And your petitioner, on behalf of Luigi Storti, further avers that the restraint and imprisonment imposed upon the said Luigi Storti, in that he is confined by the said Bridges at the State prison at Charlestown aforesaid, for the purpose of awaiting the infliction of the death penalty, according to said chapter 326 of the Acts of 1898, are unauthorized and illegal, because—

First. The punishment- imposed by said act of the legislature, and by said sentence of the court, are in violation of section 26 of the declaration of rights of the constitution of this Commonwealth, which provides that "no magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments."

Second. The punishment provided by section 6, chapter 326, of the Acts of 1898 of the Legislature of Massachusetts, is in violation of section 26 of the declaration of rights of the constitution of this Commonwealth in that it is a "cruel punishment."

Third. The punishment provided by section 6, chapter 326, of the Acts of 1898 of the Legislature of Massachusetts, is in violation of section 26 of the declaration of rights of the constitution of this Commonwealth in that it is an "unusual punishment."

Fourth. The punishment provided by sections 2, 3, 4, and 5 of chapter 326 of the Acts of 1898 of the Legislature of Massachusetts, is in violation of section 26 of the declaration of rights of the constitution of this Commonwealth in that it is a "cruel punishment."

Fifth. The punishment provided by sections 2, 3, 4, and 5 of chapter 326 of the Acts of 1898 of the Legislature of Massachusetts, is in violation of section 26 of the declaration of rights of the constitution of this Commonwealth in that it is an "unusual punishment."

Sixth. The discretion purported to be given to the said Bridges,

warden of the State prison at Charlestown aforesaid, to determine the precise time, within the week designated, at which the said Luigi Storti is to be executed, according to section 2, chapter 326, of the Acts of 1898 of the Legislature of the Commonwealth of Massachusetts is in violation of section 30 of the declaration of rights of the constitution of this Commonwealth in that there is delegated to an officer of the executive department of the government of Massachusetts a judicial power, which said power, to wit, the fixing of the precise day on which to inflict the death penalty, should be exercised only by the judicial department of the government of this Commonwealth.

Whereby your petitioner, in behalf of the said Luigi Storti, prays that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

JOSEPH SANTOSUOSSO.

34 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *April* 26, 1901.

Then personally appeared the above-named Joseph Santosuosso, and made oath that he has read the foregoing petition, by him subscribed, and knows the contents thereof, and that the statements therein contained are true, according to the best of his knowledge, information, and belief.

Before me,

WILLIAM M. STOCKBRIDGE,
Justice of the Peace.

Filed April 30, 1901.

A.

Warrant.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

To the sheriff of our county of Suffolk, to such deputy as he may name, and to the warden of our State prison at Boston, in said Commonwealth:

Whereas, at a sitting of our superior court holden at Boston, within and for our said county of Suffolk, for the transaction of criminal business, on the fourth day of January in the year of our Lord nineteen hundred and one Luigi Storti of said Boston, was convicted of the crime of murder in the first degree, and thereupon by our said court the said Luigi Storti was adjudged and sentenced for said crime to suffer the punishment of death by the passage of a current of electricity through his body, within the week beginning on Sunday, the seventh day of April next, as to us appears of record, a copy of which record we have caused to be hereunto annexed; and whereas a certified copy of the whole record of said conviction and sentence has been delivered to his excellency the

governor, as required by law, execution of which sentence remains to be done:

We, therefore, command you said sheriff to confine him said Luigi Storti in the jail in our said county of Suffolk, until within ten days of Sunday, the said seventh day of April next, being the first day of the week appointed for the execution of said sentence, and thereupon and within said ten days to convey him as secretly as may be to our said State prison, and to deliver him with this our warrant and with a return of your doings hereon to the said warden of said State prison or to the officer performing the duties of said warden.

And we command you, said warden, that you receive him said Luigi Storti and keep him in close custody, as provided by law, until the infliction of the punishment of death upon him, and that on some day to be by you selected within the week beginning on the said Sunday the seventh day of April next, and at an hour between midnight and sunrise, within the building provided for the purpose adjoining said State prison, agreeably to the provisions of the statute in such case made and provided, you cause execution of the said sentence of our said court in all respects to be done and performed upon him the said Luigi Storti by causing to pass through his body a current of electricity of sufficient intensity to cause death and continuing the application of such current until he is dead; for all which this shall be your sufficient warrant.

Hereof fail not at your peril, and you said warden are to make return of this warrant with your doings hereon into the office of the clerk of our said court within and for our said county of Suffolk, as soon as may be after you shall have executed the same.

Witness Albert Mason, Esquire, and the seal of our said court, at said Boston, this eighth day of January in the year of our Lord nineteen hundred and one.

JOHN P. MANNING, *Clerk.*

Record of Superior Court.

This indictment was found and returned into said superior court by the grand jurors on the 9th day of December A. D. 1899, when notices of the finding of said indictment, with copies of said indictment, were sent by the clerk of said court to the chief justice of said court and the attorney general of said Commonwealth.

On said day a copy of said indictment, and a notice of its finding by the grand jurors and its entry in said superior court, were delivered by said clerk to the sheriff of said county to be by him delivered to said Storti in the common jail in said county; and on the 12th day of said December said copy and notice were delivered to said Storti in said jail by said sheriff.

On the 27th day of said December said Storti was brought into said court from said jail and was set at the bar, and, having said indictment read to him, he said thereof that he was not guilty.

Said Storti thereupon notified said court that he was without

counsel, and requested said court to assign counsel for his defence, and said Storti was remanded to said jail.

On the 27th day of April A. D. 1900 said Storti was brought into said court from said jail and notified said court that he had retained Peter S. Maher, Esq., as his counsel and withdrew his request that the court assign him counsel for his defence, and said Storti was remanded to said jail.

On the 11th day of June A. D. 1900 said Storti notified said court that he was without counsel, and requested a second time that the court assign counsel for his defence. Thereupon the court appointed Peter S. Maher, Esq., and Clarence W. Rowley, Esq., counsel
36 for said Storti, and said Storti was notified of said appointment at said jail by the clerk of said court.

On the 25th day of said June said Storti was brought into said court from said jail and by his attorneys aforesaid filed a motion to quash said indictment, which motion, after a hearing before Honorable Daniel W. Bond, and Honorable Frederick Lawton, justices of said court, was overruled, and said Storti was set at the bar, and for trial put himself upon the country, and the Commonwealth did the like by its attorneys, Michael J. Sughrue, Esq., and John D. McLaughlin, Esq.

A jury was empanelled and sworn to try the issue, to wit, George R. Whittemore, foreman, and eleven of his fellows, namely, Timothy F. Callahan, John R. Maguire, John B. Kinney, Jacob Shillady, James B. Fuller, John H. West, Clayton O. Dewey, George F. Waldron, Samuel H. Irwin, Daniel V. Goodwin, and Alfred W. Tilton, who, after hearing and understanding all matters and things concerning the same, returned their verdict on the 1st day of July A. D. 1900, and on oath said that said Storti was guilty of murder in the first degree.

The court thereupon extended the time for the filing of exceptions by said Storti until on or before the 1st day of August A. D. 1900, and said Storti was remanded to said jail.

On the 25th day of said July, said Storti, by his attorneys, filed exceptions to the rulings of the presiding justices at said trial.

On the 10th day of November A. D. 1900 said exceptions, being examined and found conformable to the truth, were allowed and were ordered to be transmitted to the supreme judicial court.

On the 14th day of November A. D. 1900 the said Storti, by his attorneys, filed an appeal to said supreme court from the order of said superior court overruling said motion to quash.

On the 2d day of January A. D. 1901 a rescript is received from said supreme court in the words following: "Exceptions overruled."

On the 3rd day of said January a second rescript is received from said supreme court in the words following: "Rescript of Jan. 2, 1901, amended by adding thereto, Order overruling the motion to quash the indictment affirmed."

On the 4th day of said January the said Storti is brought into said court from said jail and is set at the bar to receive sentence.

It is therefore considered and ordered by said court that said Storti, for his offence of murder in the first degree, suffer the pun-

ishment of death by the passage of a current of electricity through his body, and that said sentence be executed upon said Storti within the week beginning on Sunday, the seventh day of April in 37 the year of our Lord one thousand nine hundred and one, in the manner prescribed by the laws of said Commonwealth, and that said Storti stand committed in pursuance of said sentence.

All of which appears of record in said superior court.

In testimony whereof, I hereunto set my hand and affix the seal of said superior court, at Boston, aforesaid, this eighth day of January in the year of our Lord one thousand nine hundred and one.

[SEAL.] JOHN P. MANNING, *Clerk.*

B.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

At the superior court, begun and holden at the city of Boston, within and for the county of Suffolk, for the transaction of criminal business, on the first Monday of December, in the year of our Lord one thousand eight hundred and ninety-nine.

The jurors for the Commonwealth of Massachusetts, on their oath present that Luigi Storti and Vincenzo Bocielli, otherwise called Vincenzo Buccilla, otherwise called Vincenzo Bucillo, of Boston, aforesaid, on the seventh day of November, in the year of our Lord one thousand eight hundred and ninety-nine, at Boston, aforesaid, with force and arms, in and upon one Michele Calucci, feloniously, wilfully and of their malice aforethought did make an assault; and that the said Storti and Bocielli, with a certain axe, the said Calucci, in and upon the head of said Calucci, then and there feloniously, wilfully and of their malice aforethought, did strike, beat and bruise, giving to the said Calucci then and there, with the axe aforesaid, in and upon the head of said Calucci, divers mortal strokes, wounds and bruises, of which said mortal strokes, wounds and bruises the said Calucci on said seventh day of November, at Boston aforesaid, did languish and languishing did live, on which said seventh day of November, the said Calucci, at Boston, aforesaid, of the said mortal strokes, wounds and bruises, died.

And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Luigi Storti and said Vincenzo Bocielli the said Michele Calucci in manner and form aforesaid then and there feloniously, wilfully and of their malice aforethought did kill and murder. And the jurors, aforesaid, for the Commonwealth of Massachusetts, on their oath aforesaid, do further present that Luigi Storti and Vincenzo Bocielli, otherwise called Vincenzo Bucilla, otherwise called Vincenzo Bucillo, did assault and beat Michele Calucci with intent to murder him, by striking him over the head with an axe, and by said assault and beating did kill and murder said Calucci.

38 And the jurors aforesaid do say, that both counts in this indictment are different descriptions of the same act.

A true bill.

JOHN H. McGEE,
Foreman of the Grand Jury.

JOHN D. McLAUGHLIN,
2d Ass't District Attorney.

C.

The Commonwealth of Massachusetts to all persons to whom these presents shall come, Greeting:

[L. S.] W. Murray Crane. Whereas, before our superior court begun and holden at the city of Boston within and for the county of Suffolk, on the first Monday of June, in the year of our Lord, one thousand nine hundred, Luigi Storti was convicted of the crime of murder in the first degree, and thereafter, to wit, on the fourth day of January in the year of our Lord, one thousand nine hundred and one, it was considered and ordered by said superior court that said Storti for his offence of murder in the first degree, suffer the punishment of death, by the passage of a current of electricity through his body, and that said sentence be executed upon said Storti within the week beginning on Sunday, the seventh day of April, in the year of our Lord, one thousand nine hundred and one, in the manner prescribed by the laws of said Commonwealth, which said sentence remains unexecuted.

And whereas, by section 36 of chapter 215 of our public statutes "The governor, by and with advice of the council, may respite from time to time, the execution of a sentence of death for stated periods so long as he may deem it necessary to afford him, by and with the advice aforesaid, an opportunity of exercising the constitutional right of pardon, and of investigating and considering the facts of the case for that purpose."

Now know ye, that by and with the advice of the council, the execution of said sentence of our superior court against said Luigi Storti is respited, the term of respite to expire on Saturday, the eleventh day of May next; of which all our judges, justices, magistrates, and officers of every denomination, especially the warden of our State prison, are to take notice.

Witness His Excellency, W. Murray Crane, our governor, with the advice and consent of our council, and our seal hereunto
39 affixed, at Boston, this ninth day of April, in the year of our Lord, one thousand nine hundred and one, and of the Independence of the United States of America, the one hundred and twenty-fifth.

By his excellency, the governor, with the advice of the council.

HERBERT H. BOYNTON,
Deputy Secretary of the Commonwealth.

Amendment of Petition.

And now comes Joseph Santosuosso, the petitioner in the above-entitled cause, and moves to amend his petition for a writ of *habeas corpus* heretofore filed, by adding, as additional grounds upon which the restraint and imprisonment of said Storti is unauthorized and illegal, as set forth in his petition heretofore filed, the following:—

Seventh. The provision in section 3 of chapter 326 of said acts of 1898, that execution shall be done within the week appointed by the court, "unless the governor pardons the offence, commutes the punishment therefor, or respites the execution as provided by law," deprives said prisoner of the rights guaranteed to him in article 1, section 9, clause 2, of the Constitution of the United States, and is in violation of said article, section, and clause, in that it deprives said prisoner of the right to be discharged on a writ of *habeas corpus*, even though the sentence imposed upon him is erroneous.

Eighth. The provision in section 3 of chapter 326 of said acts of 1898, that execution shall be done within the week appointed by the court "unless the Governor pardons the offence, commutes the punishment therefor, or respites the execution as provided by law," deprives said prisoner of the rights guaranteed to him in part 2, chapter 6, article 7, of the constitution of Massachusetts, and is in violation of said part, chapter, and article, in that it deprives said prisoner of the right to be discharged on a writ of *habeas corpus*, even though the sentence imposed upon him is erroneous.

By his attorney, W. M. STOCKBRIDGE.

Filed and allowed May 1, 1901.

Order of notice issued thereon April 30, 1901, returnable forthwith.

Further Amendment of Petition.

And now comes the petitioner in the above-entitled cause, and moves to further amend his petition for a writ of *habeas corpus*, heretofore filed, by adding, as an additional ground upon which the restraint and imprisonment of said Storti is unauthorized and illegal, as set forth in his petition heretofore filed, the following:—

Ninth. The provision in section 3 of chapter 326 of said acts of 1898, that execution shall be done within the week appointed by the court, "unless the governor pardons the offence, commutes the punishment therefor, or respites the execution, as provided by law," deprives said prisoner, he being a subject of His Majesty the King of Italy, of the rights guaranteed to him under the treaty now in force between the United States of America and His Majesty the King of Italy, and is in violation of said treaty, in that it deprives said prisoner of the right possessed by the natives of the United States, under the Constitution thereof, to have the benefit of a writ of *habeas corpus*,

even though the sentence imposed upon him shall be illegal and erroneous in any respect whatsoever.

By his attorney, W. M. STOCKBRIDGE.

Filed and allowed May 2, 1901.

Reservation.

This case came on to be heard upon the petition and amendment thereto; and thereupon, the attorney general contending that no issues of fact are raised thereby, I reserved the case and the questions of law arising upon the amended petition, and the facts therein stated, for the consideration and determination of the full court, in order that they may make such order thereon as in their opinion law and justice may require.

WILLIAM CALEB LORING, *J. S. J. C.*

May 4, 1901.

Copy.
Attest: JOHN NOBLE, *Clerk.*

41 "F."

HOLMES, *C. J.:*

These proceedings are respectively a writ of error and a petition for a writ of *habeas corpus*. Both are intended to raise the same issue, that the punishment, death by electricity, to which the said Storti has been sentenced, under St. 1898, c. 326, sec. 61, is "cruel or unusual" within art. 26 of the Massachusetts declaration of rights. Upon the writ of error, the plaintiff in error insisting that the assignment was of error in fact, evidence was heard, the plaintiff in error being brought into court by *habeas corpus* to be present at the hearing and the presiding justice found that the assignment as not true. The independent petition for *habeas corpus* was reserved by agreement of parties for hearing by the full court at the same time with the writ of error.

In the view which we take of the case it is unnecessary to consider any question of procedure, either as between the two proceedings adopted or as to matters of detail arising under each. We therefore pass all such matters on one side. It also is unnecessary to consider whether the before-mentioned article of our declaration of rights is to be limited in its application to the action of magistrates, so far as they are left to themselves and the common law, or whether it is to be taken to embody a large general principle equally binding upon all branches of the Government, or at least binding upon magistrates and courts of law even when the legislature has undertaken to establish a punishment by its act. Finally it is unnecessary to go into any nice argument upon the words of the article, and to decide whether inasmuch as those words are "cruel or unusual" not "cruel and unusual" a punishment which is unusual but is not cruel
42 is forbidden by them. Taking all the preliminaries most favorably for the prisoner, we are clearly of the opinion that

the constitution is not contravened by the act, and we render our opinion at once that we may avoid delaying the course of the law raising false hopes in his mind. The answer to the whole argument which has been presented is that there is but a single punishment, death. It is not contended that if this is true, the statute is invalid, but it is said that it is not true, and that you cannot separate the means from the end in considering what the punishment is, any more than when the means is a current of electricity than when it is a slow fire. We should have thought that the distinction was plain. In the latter case the means is adopted not solely for the purpose of accomplishing the end of death, but for the purpose of causing the other pain to the person concerned. The so-called means is also an end of the same kind as to the death itself, or in other words is intended to be a part of the punishment. But when, as here, the means adopted are chosen with just the contrary intent, and are devised for the purpose of reaching the end proposed as swiftly and painlessly as possible, we are of opinion that they are not forbidden by the constitution, although they should be discoveries of recent science and never should have been heard of before. Not only is the prohibition addressed to what in a proper sense may be called the punishment, but, further, the word "unusual" must be construed with the word "cruel" and cannot be taken so broadly as to prohibit every humane improvement not previously known in Massachusetts.

People *ex rel.* Kemmler *v.* Durston, 119 N. Y. 569; S. C. *in re* Kemmler, 136 U. S. 436.

43 The suggestion that the punishment of death, in order not to be unusual, must be accomplished by molar rather than by molecular motion seems to us a fancy unwarranted by the constitution.

No doubt a means might be adopted which, although adopted only as a means, practically would be part of the punishment and would have to be considered as such, but such a case is not presented by a means chosen precisely because it is instantaneous. There was a hint at an argument based on mental suffering, but the suffering is due not to its being more horrible to be struck by lightning than to be hanged with the chance of slowly strangling, but to the general fear of death. The suffering due to that fear the law does not seek to spare. It means that it shall be felt.

Some criticism was addressed to minor details of the law. The provision that after delivery to the warden of the State prison the prisoner shall be kept in a special cell and only certain persons allowed access to him without an order of the court, does not prevent, and by its true construction is not intended to prevent, the presence of the prisoner in court in any matter which properly still may be brought up in court, and which by the course of law or treaty may require his presence,

See Commonwealth *v.* Cody, 165 Mass. 133, 138,

as was exemplified in this case.

Leaving it to the warden to select the day of the week appointed

by the court for the execution was not intended to aggravate the prisoner's distress, by enhancing his suspense. The purpose is human, and the possible uncertainty for a brief period as to the exact
44 time is not a part of the punishment.
See further Commonwealth *v.* Costley, 118 Mass. 1, 35.

Judgment to stand.
Writ of *habeas corpus* denied.

45 This cause entered as aforesaid came on to be heard and is fully heard by the court, the Honorable William L. Putnam, circuit judge, and the Honorable Francis C. Lowell, district judge, sitting, upon argument of counsel for the petitioner, the assistant attorney general for the Commonwealth of Massachusetts being present, and upon consideration thereof, it is ordered, adjudged and decreed that the petition herein be and the same is hereby dismissed for want of jurisdiction, without prejudice to an application to the courts of the State of Massachusetts.

46 And now, to wit, May 24, 1901, comes the petitioner and claims an appeal from the said order or decree of this court to the Supreme Court of the United States and said appeal is disallowed.

A true record.
Attest: ALEX. H. TROWBRIDGE, *Clerk.*

47 UNITED STATES OF AMERICA, }
Massachusetts District, } *ss:*

I, Alexander H. Trowbridge, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record and all proceedings in the cause entitled, Luigi Storti, petitioner for writ of *habeas corpus*, No. 1122*a*, law docket, in said circuit court determined, and annexed hereto are attested copies of the assignment of errors and prayer for appeal and certificate on question of jurisdiction.

Seal of the Circuit Court, Massachusetts.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twenty-fourth day of May, A. D. 1901.

ALEX. H. TROWBRIDGE, *Clerk.*

48 Circuit Court of the United States, District of Massachusetts.

In the Matter of LUIGI STORTI, Petitioner for a Writ of *Habeas Corpus.*

Petitioner's Assignment of Errors and Prayer for Appeal.

The petitioner being aggrieved by the judgment, rulings and findings of the United States circuit court for the district of Massachusetts in the above-entitled cause, hereby appeals from the said

judgment, rulings and findings therein named and makes the following assignment of errors, to wit:

That the circuit court of the United States for the district of Massachusetts in the above-entitled cause erred in refusing to issue a writ of *habeas corpus*, and in overruling and denying each of the following propositions and contentions of the petitioner:

I.

Neither chapter 326 of the Acts of 1898 of the Commonwealth of Massachusetts, under the authority and in accordance with the provisions of which the respondent Bridges proposes to inflict the death penalty upon your petitioner, nor any other law, statutory or otherwise of said Commonwealth, provides for any punishment for a person sentenced to death under said chapter 326, where the week appointed by the court for his execution has elapsed without execution having been done upon him, and without any lawful action by the governor, in the way of pardon, commutation or respite, as provided in section 3 of said chapter 326, and the respondent Bridges has no right or authority under the laws of said Commonwealth to hold the prisoner in any further restraint or to inflict the death penalty. Nevertheless, the said Bridges continues to hold your petitioner in restraint at the State prison aforesaid, for the purpose of causing execution to be done upon him by the infliction of the death penalty, contrary to the provisions of the first section of the 14th amendment to the Constitution of the United States, under which your petitioner sets forth and specially claims a right, title, privilege and immunity.

49

II.

Neither chapter 326 of the Acts of 1898 of the Commonwealth of Massachusetts, under the authority and in accordance with the provisions of which the respondent Bridges proposes to inflict the death penalty upon your petitioner, nor any other law, statutory or otherwise of said Commonwealth, provides for any punishment for a person sentenced to death under said chapter 326, where the week appointed by the court for his execution has elapsed without execution having been done upon him, and without any lawful action by the governor, in the way of pardon, commutation or respite, as provided in section 3 of said chapter 326, and the respondent, Bridges has no right or authority under the laws of said Commonwealth to hold the prisoner in any restraint or to inflict the death penalty. Nevertheless, the said Bridges continues to hold your petitioner in restraint at the State prison aforesaid, for the purpose of causing execution to be done upon him, by the infliction of the death penalty, contrary to the provisions of the first section of the 14th amendment to the Constitution of the United States, and contrary to the third article of the now existing treaty between the United States of America, and His Majesty, the King of Italy, and contrary to section second of article six of the Constitution of the United States, under which amendment, treaty and section your petitioner specially sets up and claims herein a right, title and immunity

III.

Section 28 of chapter 214 of the Public Statutes of Massachusetts, provides as follows:

"The supreme judicial court and the superior court may, at the term at which the trial of an indictment is had, or within one year thereafter, on the petition or motion of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, or on such terms, or conditions as the court may direct."

Under this statute, execution cannot lawfully be done upon a person, sentenced to death within a year from the expiration of the term within which he was convicted, to wit, in the present case, before July 1, 1901. Nevertheless, the supreme judicial court for the Commonwealth of Massachusetts has confirmed the sentence of your petitioner by which the execution was fixed for a time within a year of the expiration of the term within which your petitioner was convicted. The question of your petitioner's rights as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, was not raised before the said supreme judicial court for the Commonwealth of Massachusetts, or in any court of Massachusetts, and the question as to the rights under the above-mentioned statute of a person sentenced to death as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, has never been raised and determined by the said supreme judicial court for the Commonwealth of Massachusetts. The execution of said sentence within said year will deprive your petitioner of his right under said section 28 of chapter 214, of the Public Statutes of Massachusetts, to move for a new trial within a year of the expiration of the term within which he was convicted and will deprive your petitioner of his life, without due process of law, and will deny him the equal protection of the laws, contrary to the first section of the 14th amendment of the Constitution of the United States, under which your petitioner specially sets up and claims herein, a right, title, privilege and immunity.

IV.

Section 28 of chapter 214 of the Public Statutes of Massachusetts, provides as follows:

"The supreme judicial court and the superior court may, at the term at which the trial of an indictment is had, or within one year thereafter, on the petition or motion of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, or on such terms or conditions as the court may direct."

Under this statute, execution cannot lawfully be done upon a person sentenced to death within a year from the expiration of the term within which he was convicted, to wit, in the present case, before July 1, 1901. Nevertheless, the supreme judicial court for the Commonwealth of Massachusetts has confirmed the sentence of your

petitioner by which the execution was fixed for a time within a year of the expiration of the term within which your petitioner was convicted. The question of your petitioner's rights as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, was not raised before the said supreme judicial court for the Commonwealth of Massachusetts, or in any court of Massachusetts, and the question as to the rights under the above-mentioned statute of a person sentenced to death as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, has never been raised and determined by the said supreme judicial court for the Commonwealth of Massachusetts. The execution of said sentence within said year will deprive your petitioner of his right under said section 28 of chapter 214, of the Public Statutes of Massachusetts, to move for a new trial within a year of the expiration of the term within which he was convicted and will deprive your petitioner of his life, without
52 due process of law and will deny him the equal protection of the laws, contrary to the first section of the 14th amendment to the Constitution of the United States, and contrary to the third article of the now existing treaty between the United States of America, and His Majesty, the King of Italy, and contrary to section second of article six of the Constitution of the United States, under which amendment, treaty and section your petitioner specially sets up and claims herein a right, title, privilege and immunity.

V.

Section 28 of chapter 214, of the Public Statutes of Massachusetts, provides as follows:

"The supreme judicial court and superior court may, at the term at which the trial of an indictment is had, or within one year thereafter, on the petition or motion of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done or on such terms or conditions as the court may direct."

Under this statute, execution cannot lawfully be done upon a person sentenced to death within a year from the expiration of the term within which he was convicted, to wit, in the present case, before July 1, 1901. Nevertheless, the supreme judicial court for the Commonwealth of Massachusetts has confirmed the sentence of your petitioner by which the execution was fixed for a time within a year of the expiration of the term within which your petitioner was convicted. The question of your petitioner's rights as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, was not raised before the said supreme judicial court for the Commonwealth of Massachusetts, or any court of Massachusetts, and the question as to the rights under the above
53 mentioned statute of a person sentenced to death as to objecting to execution being done upon him within a year of the expiration of the term within which he was convicted, has never been raised and determined by the said supreme judicial court for

the Commonwealth of Massachusetts. The execution of said sentence within said year, will deprive your petitioner of his right under said section 28 of chapter 214 of the Public Statutes of Massachusetts, to move for a new trial within a year of the expiration of the term within which he was convicted, and of his right to be present at the decision on such motion, which right is guaranteed to him by article 23 of the treaty now in force between the United States of America and His Majesty, the King of Italy, to wit:

"The citizens of either party shall have free access to the courts of justice, in order to maintain and defend their own rights, without any other conditions, restrictions or taxes than such as are imposed upon the natives. They shall, therefore, be free to employ, in defence of their rights, such advocates, solicitors, notaries, agents, and factors as they may judge proper, in all their trials at law; and such citizens or agents shall have full opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them, and likewise at the taking of all examinations and evidences which may be exhibited in the said trials."

Feb. 26, 1871.

Nov. 23, 1871.

Your petitioner specially sets up and claims herein, a right, title, privilege and immunity in the above respect, under said treaty.

VI.

Under the law of Massachusetts, pending the motion for a new trial, above referred to, which was filed by your petitioner May 10, 1901, execution cannot lawfully be done upon your petitioner by the infliction of the death penalty. Nevertheless your petitioner apprehends, with reason, that notwithstanding the pendency of said motion for a new trial, and before your petitioner can have a fair opportunity to be heard on said motion and to be present at the decision of said motion, the respondent intends, immediately upon the determination of the appeal above referred to, now pending in the Supreme Court of the United States, in case the decision on said appeal shall be adverse to your petitioner, to forthwith cause execution to be done upon your petitioner and to thereby deprive him of his rights under the first section of the 14th amendment to the Constitution of the United States and under the said article 23 of the treaty between the United States of America, and His Majesty, the King of Italy, under which amendment and which treaty your petitioner specially sets — and claims herein a right, title, privilege and immunity.

54

VII.

The respondent, Bridges, as warden of the State prison, derives his authority to hold your petitioner in custody solely by virtue of, and only in strict accordance with, the provisions of said chapter 326 of the Acts of 1898, and neither he nor his predecessors in office, prior to the passage of said chapter 326 of the Acts of 1898, ever have had authority to hold in custody a person convicted of the crime of murder in the first degree. No authority is given to the said respondent, as warden of the State prison aforesaid, or in any capacity

to retain the custody of your petitioner after the expiration of the week appointed by the court, within which sentence shall be executed, except through the lawful action of the governor as set forth in section 3 of said chapter 326. The week appointed by the court, within which sentence shall be executed upon your petitioner, has expired, and no lawful action has been taken by the governor,
55 in the way of pardoning the offense, commuting the punishment therefor, or respiting the execution, and said respondent, as said warden, has now no authority of law to retain the custody of your petitioner. Nevertheless, said respondent, Bridges, continues to hold your petitioner in restraint, at the State prison aforesaid, and is depriving your petitioner of his liberty, without due process of law, and is denying to your petitioner the equal protection of the laws contrary to the provisions of section 1 of article 14 of the amendments to the Constitution of the United States, under which your petitioner sets up and specially claims herein a right, title, privilege and immunity.

VIII.

The respondent, Bridges, as warden of the State prison, derives his authority to hold your petitioner in custody solely by virtue of, and only in strict accordance with, the provisions of said chapter 326 of the Acts of 1898, and neither he nor his predecessors in office, prior to the passage of said chapter 326 of the Acts of 1898, ever have had authority to hold in custody a person convicted of the crime of murder in the first degree. No authority is given to the said respondent, as warden of the State prison aforesaid, or in any capacity, to retain the custody of your petitioner after the expiration of the week appointed by the court, within which sentence shall be executed, except through the lawful action of the governor, as set forth in section 3, of said chapter 326. The week appointed by the court, within which sentence shall be executed upon your petitioner, has expired, and no lawful action has been taken by the governor, in the way of pardoning the offense, commuting the punishment therefor, or respiting the execution, and said respondent, as said warden, has now no authority of law to retain the custody of your petitioner. Nevertheless, said respondent, Bridges, continues to hold your petitioner in restraint,
56 at the State prison aforesaid, and is depriving your petitioner of his liberty, without due process of law, and is denying to your petitioner the equal protection of the laws, contrary to the provisions of section 1 of article 14 of the amendments to the Constitution of the United States, and contrary to the third article of the now existing treaty between the United States of America, and His Majesty, the King of Italy, and contrary to section second of article six of the Constitution of the United States, under which amendment, treaty and section your petitioner specially sets up and claims herein a right, title, privilege and immunity.

IX.

The court also erred in ruling that it had no jurisdiction of the cause

And for the failure of the court to find in the manner prescribed, and for other reasons, your petitioner prays that the decision of the United States circuit court for the district of Massachusetts may be reversed, and that a judgment may be ordered that a writ of *habeas corpus* shall issue to bring your petitioner before the said court, and that he be discharged upon such writ. That thereupon your petitioner appeals to the Supreme Court of the United States from the decision and findings of the said circuit court and prays that this, his appeal, may be allowed.

By his attorneys, WM. M. STOCKBRIDGE,
G. PHILIP WARDNER,
Of Counsel for Petitioner.

A true copy:

[Seal of the Circuit Court, Massachusetts.]

Attest: ALEX. H. TROWBRIDGE, *Clerk.*

57 Circuit Court of the United States, District of Massachusetts.

In the Matter of LUIGI STORTI.

Certificate.

We, the undersigned, certify that the above matter was presented before us for determination on the twenty-fourth day of May, 1901, and was argued by counsel, that the question of the jurisdiction of this court was in issue, and was considered by us, and our decision dismissing the petition was on the ground of want of jurisdiction.

Judge Lowell is now absent.

W. L. PUTNAM,
Circuit Judge.

May 24, 1901.

Ordered that the above be entered of record.

Attest: BENJ. H. BRADLEE,
Deputy Clerk.

A true copy:

[Seal of the Circuit Court, Massachusetts.]

Attest: ALEX. H. TROWBRIDGE, *Clerk.*

And now, to wit, June 21, 1901, comes the petitioner & claims an appeal from the said order or decree of said United States circuit court for the district of Massachusetts to the Supreme Court of the United States & said appeal is allowed.

HORACE GRAY,
Justice Sup. Ct. U. S.

58 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

United States Circuit Court of Appeals for the First Circuit.

The President of the United States to the Commonwealth of Massachusetts & Benjamin F. Bridges, the warden of the State prison at Boston, in the county of Suffolk, in said Commonwealth, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., on the* nineteenth day of July next, pursuant to an appeal duly obtained from a decree of the† circuit court of the United States for the district of Massachusetts wherein Luigi Storti, a subject of the King of Italy & a citizen of the Kingdom of Italy is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Horace Gray, justice of the Supreme Court of the United States, this 21st day of June, in the year of our Lord one thousand nine hundred and one.

HORACE GRAY,
Justice Sup. Ct. U. S.

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*Not exceeding 30 days from the day of signing.
†Name of court in which the decree is entered.

59 [Endorsed:] No. —. Law. Luigi Storti, petitioner for writ of *habeas corpus.* Citation on appeal & acknowledgment of service thereon.

BOSTON, *June* 21, 1901.

Service of the within citation is hereby accepted for the Commonwealth of Massachusetts and Benjamin F. Bridges, warden, by—

ARTHUR W. DE GOOSLE,
Assistant Attorney General of Massachusetts.

60 (*Bond to Party on Appeal.*)

Know all men by these presents, that we, Luigi Storti, commorant of Boston, Massachusetts, as principal, and Joseph Santosuosso of said Boston, as surety, are held and firmly bound unto the Commonwealth of Massachusetts & Benjamin F. Bridges, warden of the State prison at Boston in said Massachusetts, in the full and just sum of two hundred dollars to be paid to the said Commonwealth & the said Bridges to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated the twenty-first day of June in the year of our Lord one thousand nine hundred and one.

Whereas lately at a circuit court of the United States for the district of Massachusetts in a petition depending in said court in which the said Luigi Storti is petitioner for a writ of *habeas corpus* a decree was entered against the said Storti and the said Storti having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the said decree and a citation directed to the said Commonwealth of Massachusetts & to Benjamin F. Bridges, warden of the State prison at Boston aforesaid citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the nineteenth day of July next.

Now the condition of the above obligation is such, that if the said Storti shall prosecute his appeal to effect, and answer all damages and costs, if he fail to make his appeal good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

LUIGI STORTI, [L. S.]
By his attorney, G. PHILIP WARDNER.
JOSEPH SANTOSUOSSO. [L. S.]

Signed, sealed and delivered in presence of

——— ———.

Approved:

HORACE GRAY,
Justice Sup. Ct. U. S.

A true copy:

[Seal of the Circuit Court, Massachusetts.]

Attest: ALEX. H. TROWBRIDGE, *Clerk.*

Endorsed on cover: File No. 18,231. Massachusetts C. C. U. S. Term No. 378. Luigi Storti, appellant, *vs.* The Commonwealth of Massachusetts & Benjamin F. Bridges warden of the State prison at Boston, Massachusetts. Filed July 19th, 1901.